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5-25-1979

State of New York Public Employment Relations Board Decisions from May 25, 1979

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from May 25, 1979

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A - 5/25/79

In the Matter of

ROCHESTER FIRE FIGHTERS, LOCAL 1071,
I.A.F.F. (AFL-CIO),

Respondent,

-and-

CITY OF ROCHESTER,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-3781

REDMOND & PARRINELLO,
(JOHN R. PARRINELLO, ESQ.,
of Counsel), for Respondent

LOUIS N. KASH, ESQ., (GERALD P.
COOPER, ESQ., & DAVID R. MILLER, ESQ.,
of Counsel), for Charging Party

The charge herein was brought by the City of Rochester (hereinafter the City) against Rochester Fire Fighters, Local 1071, I.A.F.F. (AFL-CIO), (hereinafter the Union). It alleges that the Union violated its duty to negotiate in good faith by submitting to interest arbitration five demands involving nonmandatory subjects of negotiation. As the dispute is one that primarily involves the scope of negotiations under the Public Employees' Fair Employment Act, it is being processed under Section 204.4 of our Rules. This section provides for the submission of a dispute directly to the Board without any report or recommendation from the hearing officer.

Demand 1

"ARTICLE XIV, SECTION 4 (Confirmation of Verbal Orders)

In order to remain in effect all verbal orders concerning work rules and/or regulations promulgated

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by the Fire Chief must be confirmed by written order within two (2) working days of its issuance."

Initially the City complained that the Union, in its petition for arbitration, incorrectly reported that there had been an agreement upon this demand. It asserts that the only agreement was a conditional one which would take effect only if this Board determines that the demand is a mandatory subject of negotiation. The City contends that the alleged misrepresentation is an improper practice. This contention is rejected. In Johnson City, 12 PERB ¶3020 (1979), we said (at page 3040):

"the charge that the Local misstated the Village's position in its interest arbitration petition does not constitute an improper practice as the petition is merely a procedural step. The Village can restate what its position is in its response to the petition for interest arbitration."

The City makes two arguments in support of the proposition that this demand is not a mandatory subject of negotiation. First, it argues that "the form of command is not a term or condition of employment." Second, it argues that the demand is too broad in that it may "impact on areas other than those dealing with terms and conditions of employment." We reject both of the City's arguments. The form of an order is a mandatory subject. The issue before us is not one challenging an employer's authority to issue orders. Rather, we deal here with whether the form in which the order is issued is a mandatory subject of negotiation even if the substance of the order is not.¹ A fire fighter may be disciplined if he fails to comply with the orders of his Fire Chief. Spoken orders, if forgotten, cannot be easily reconstructed

¹ Emergency situations may justify the issuance of emergency orders in a form deemed suitable by the employer but the demand herein relates to standing orders and not to emergency orders.

and disagreements as to the specifics of a spoken order cannot be easily resolved. Employees are entitled to negotiate for a precisely recorded statement of the employer's standing orders concerning "work rules and/or regulations" that they must follow.

Demand 2

"ARTICLE XIV, SECTION 6 (Temperature Guidelines)

The City agrees that inspections, surveys and/or other non-fire related duties shall be performed during weekdays, Monday through Friday between 1300 hours and 1500 hours.

No inspections and/or surveys shall be performed when:

1. the temperature is:
 - A. At or above 85° (degrees), as per the 1245 temp.
 - B. At or below 45° (degrees), as per the 1245 temp.
2. on weekends, on contractually recognized holidays, or
3. during inclement weather, i.e. precipitation.

The temperature shall be obtained by the Fire Dispatcher at 1245 hours from the U.S. Weather Bureau, Monroe County Airport and given out directly thereafter.

Other non-fire related duties shall be, but not limited to, surveys and/or inspections or area problems, pre-plan mapping and pre-plan inspections and/or surveys."

This demand is not a mandatory subject of negotiation. Its primary effect is that it would inhibit the City from providing specific services to its constituency at certain times. A City may decide unilaterally when inspections ought to be performed and whether they should be called off because of weather conditions.² When it makes such a decision, it cannot be required to negotiate as to a demand that would prevent the performance of any services that it deems appropriate for the performance of its mission.

² Compare City of White Plains, 5 PERB ¶3008 (1972), in which we ruled that the right of fire fighters to negotiate the schedules of individuals and groups of fire fighters was subordinate to the unilateral right of the City to determine the number of fire fighters it must have on duty at any given time. Also, compare Orange County Community College, 9 PERB ¶3068 (1976), in which we ruled that an employer need not negotiate with respect to a demand that would restrict the scheduling or extent of the services that it provides to the public.

Demand 3

"ARTICLE XVII, SECTION 2 (Hazardous Duty and Payments Therefor)

A. The City and Union agree that extra work and safety considerations arise from a reduction in manpower. Accordingly, the City agrees to make Hazardous Duty payments to each member on duty with a Fire Company according to the following schedule:

1. 3 members on duty, time and one half for each day or night worked.
2. 2 members on duty, double time for each such day or night worked.
3. 1 member on duty, triple time for each such day or night worked.

Mini-Maxi Companies shall use the above schedule, but the two (2) members assigned to the mini-pumper (s) shall not be counted for purposes of this section 2-A.

B. The City and Union agree that extra work and/or hazards arise from the closing of fire companies. Accordingly, the City agrees to make Hazardous Duty payments to each member on duty with a Truck Company or Engine Company, whenever a similar company is closed, according to the following schedule:

1. Closing one (1) Truck Company or Engine Company, time plus one-half shall be paid to each member on duty with each similar Company for each day or night worked.
2. Closing of two (2) Truck Companies or Engine Companies, double time shall be paid to each member on duty with each similar company for each day or night worked.
3. Closing of three (3) Truck Companies or Engine Companies, triple time shall be paid to each member on duty with each similar Company for each day or night worked.

The Squad Companies shall be counted as Truck Companies and the Mini-pumper (s) shall be counted as Engine Companies for the purposes of this section 2-B.

C. For purposes of this section (2-B and C), day or night worked shall include any portion of a day or night."³

This is a demand for premium pay that is related to variations in work load and to employment hazards. The circumstances that create the variations are themselves not mandatory subjects of negotiation because they involve the

³ The closing of companies referred to in the demand means temporary closings. The demand is not concerned with permanently closed fire companies.

manner in which the City performs its public responsibilities. The demand, however, is for an economic benefit and is a mandatory subject of negotiation, City of Newburgh, 11 PERB ¶13087 (1978).

Demand 4

"ARTICLE XVII, SECTION 2-D

All fire ground evolutions shall be carried out in accordance with recognized standards of safe practice. Compliance with the standards established in the training manuals of the National Fire Protection Association, as last revised, shall be prima facie evidence of compliance with the intent of this section."

This demand is not a mandatory subject of negotiation. On its face, it is so vague that the City might not understand what would be required of it. The first sentence links employee safety to "fire ground evolutions" - a term that both we and the City find ambiguous. The second sentence implies that any action that does not comply with a standard contained in National Fire Protection Association Manuals would be deemed to be a violation of a contractual obligation. This implication is strengthened by the Union's brief which states that the demand requires that the Manuals be used to provide "standards necessary to deal with all fire ground evolutions." Because the Manuals are voluminous and deal with many matters that are not terms and conditions of employment, this demand would extend negotiations to such matters.

Demand 5

"ARTICLE XVII, SECTION 3


The City will take appropriate steps to introduce appropriate legislation in a timely manner to seek to amend Section 8 B-5 of the Charter of the City of Rochester with relation to its reversionary clause and to provide therein that

in the event that any portion or the whole of 8 B-5 shall be declared to be unconstitutional or if the present 207 A of the General Municipal Law shall be declared to be unconstitutional, that in such event, the benefits and application of Section 8 B-5 to be the same as were previously given under the former Section 207 A of the General Municipal Law as it was prior to the time of the last Amendment."

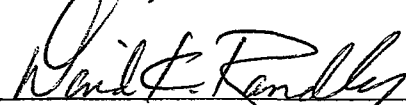
This is not a demand for a change in or the maintenance of terms and conditions of employment. Rather, it is a demand that standby legislation be enacted in the event that existing legislation providing compensation to injured fire fighters is determined to be unconstitutional. Ordinarily the content of legislation is not within the scope of negotiations. Legislation only becomes a matter of concern under the Taylor Law when it is necessary for the implementation of terms of collective agreement (CSL §204-a). That is not the thrust of the instant demand. It is not a mandatory subject of negotiation.

NOW, THEREFORE, WE ORDER that the Rochester Fire Fighters Local 1071, I.A.F.F. (AFL-CIO) withdraw Demands 2,4 and 5. We further order that with respect to Demands 1 and 3 the charge herein be and it hereby is dismissed.

DATED: New York, New York
May 25, 1979


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
STATE OF NEW YORK, UNIFIED COURT SYSTEM : #20 - 5/25/79
(SUFFOLK COUNTY), :
Employer, :
-and- :
SUFFOLK COUNTY COURT EMPLOYEES ASSOCIATION, : Case No. C-1672
Petitioner, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :
LOCAL 1000, AFSCME, :
Intervenor, :
-and- :
LOCAL 237, TEAMSTERS, SUFFOLK COUNTY COURT :
EMPLOYEES CHAPTER, :
Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Suffolk County Court Employees Association

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All non-judicial titles which, prior to April 1, 1977, were included in Suffolk County Bargaining Unit No. 2 (white collar).

Excluded: Deputy Commissioner Jurors, Deputy Chief Clerk Supreme Court, Chief Deputy Commissioner Jurors, Deputy Chief Clerk District Court, Executive Assistant Administrative Judge, Chief Clerk District Court, Chief Clerk County Court, Commissioner Jurors, Deputy Chief Clerk County Court, Chief Clerk Supreme Court, Deputy Chief Clerk Surrogate Court, Deputy Chief Clerk Family Court, Chief Clerk Surrogate Court, Chief Clerk Family Court, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Suffolk County Court Employees Association

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 25th day of May, 1979
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2B - 5/25/79
HERRICKS UNION FREE SCHOOL DISTRICT, :
Employer, :
-and- :
HERRICKS CLERICAL, CUSTODIAL/MAINTENANCE : Case No. C-1789
ASSOCIATION, :
Petitioner, :
-and- :
NASSAU EDUCATIONAL CHAPTER, HERRICKS UNIT, :
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Herricks Clerical, Custodial/Maintenance Association

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All clerical, custodial and maintenance employees.

Excluded: Superintendent of Buildings and Grounds, Accounting Manager, Administrative Assistants and Tabulating Supervisor.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Herricks Clerical, Custodial/Maintenance Association

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 25th day of May, 1979
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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